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IN THE
COURT OF APPEALS OF INDIANA

PRINCE DENO McCLENDON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A05-0610-CR-558
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0407-FB-355

June 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Prince McClendon appeals the revocation of his probation and the execution of his previously suspended sentence. McClendon presents the following restated issues for review:

1. Was the revocation court's written sentencing order defective because it did not state with sufficient specificity the reason for revoking McClendon's probation, and was the evidence sufficient to support revocation?

2. Did the revocation court err in executing the entire term of the suspended sentence?

We affirm.

The facts favorable to revocation are that on March 18, 2005, McClendon pled guilty to driving while suspended as a class A misdemeanor, criminal recklessness as a class D felony, and interference with reporting a crime, a class A misdemeanor. Pursuant to a September 23, 2005 amended sentencing order, McClendon was sentenced to a three-year suspended sentence on the criminal recklessness conviction, one-year suspended sentences for the other two convictions, with all sentences to run concurrently, and eighteen months probation. The conditions of probation included: (1) paying court costs and user fees, (2) abstaining from alcohol use, (3) maintaining employment, (4) refraining from violating the law, (5) keeping the Madison Probation Department (the Probation Department) informed of his address, (6) reporting to the Probation Department in a timely manner, and (7) obeying his curfew, which required that he be home between midnight and 6 a.m. unless he was at work.

Shortly after 1:00 a.m. on July 20, 2006, Officers Trent Chamberlain and Mark Naselroad of the Anderson Police Department were dispatched to a Pizza King restaurant. Upon arrival, they observed McClendon in the parking lot talking on a cell phone. When McClendon saw the officers, he turned and walked away. Officer Chamberlain ordered McClendon to stop, but McClendon merely changed directions and continued walking away. Officers Chamberlain and Naselroad got out of their patrol car and approached McClendon. As he neared McClendon, Officer Chamberlain detected a strong odor of alcohol on McClendon's person, and McClendon admitted he had been drinking. Officer Chamberlain observed that McClendon had noticeable bulges in his pockets and asked for McClendon's permission to search the pockets. McClendon consented. In one pocket, the officer found a small bag with a drawstring containing women's jewelry. As the officer reached for the other pocket, McClendon fled. Officer Chamberlain chased McClendon and, during the chase, saw McClendon drop a black and silver metallic object. Chamberlain picked up the object and determined it was a stainless steel AMT .380 handgun. When the officer retrieved it, it was still warm from body heat. Police later determined the gun had been stolen within the last month. When the officers finally overtook McClendon, he refused to cooperate, so they were forced to wrestle him to the ground and handcuff him.

As a result of the foregoing events, the Probation Department filed a notice alleging McClendon violated his probation. The notice alleged McClendon committed the following violations: (1) Failure to obey the law when, on July 20, he committed the

offenses of misdemeanor public intoxication, misdemeanor resisting law enforcement, carrying a handgun without a license, and receiving stolen property; (2) failure to keep the Probation Department apprised of his current address; (3) failure to timely report to the Probation Department; (4) failure to pay his probation and administrative fees; (5) failure to maintain employment and/or to verify his employment with the Probation Department; and (6) violation of curfew.

An evidentiary hearing was conducted, after which the trial court found that McClendon violated his probation. Based upon the finding of violations, the revocation court executed McClendon's three-year, suspended sentence.

1.

McClendon contends the revocation order must be reversed because "the Trial Court erred by failing to state its reasons and the evidence relied upon in writing, for revoking his probation due process requires that, when revoking probation, the Court state its reasons and the evidence relied upon, in writing, as part of the record." *Appellant's Brief* at 8.

Pursuant to Ind. Code Ann. § 35-38-2-3(a) (West, PREMISE through 2006 Second Regular Session), "[t]he court may revoke a person's probation if: (1) the person has violated a condition of probation during the probationary period...." The State must prove the violation of a probation condition by a preponderance of the evidence. I.C. § 35-38-2-3(e). Due process requires a written statement by the fact finder regarding the evidence relied upon and the reasons for revoking probation. *Hubbard v. State*, 683

N.E.2d 618 (Ind. Ct. App. 1997). "This requirement is a procedural device aimed at promoting accurate fact finding and ensuring the accurate review of revocation decisions." *Id*. at 620-21. "We have held that placing the transcript of the evidentiary hearing in the record, although not the preferred way of fulfilling the writing requirement, is sufficient if it contains a clear statement of the trial court's reasons for revoking probation." *Id*. at 621.

In the instant case, the reasons for revoking probation were set out in the revocation court's Order of Revocation of Probation, as follows:

> The Court finds defendant violated the conditions of his/her probation by preponderance of evidence in that he committed new criminal offenses as alleged in violation; failed to keep probation informed of address; failed to report timely; failed to pay probation fees and administration fee; failed to maintain employment; violated curfew.

Appellant's Appendix at 32. As explained elsewhere in this opinion, there was evidence supporting at least some of those allegations of violations; thus, the writing requirement is satisfied. *See Hubbard v. State*, 683 N.E.2d 618.

We turn now to the sufficiency of the evidence supporting revocation. Although the revocation court did not issue a separate writing, the evidence it relied upon in revoking McClendon's probation is contained in the transcript of the trial court's evidentiary hearing. The evidence, particularly Officer Chamberlain's testimony, demonstrated that McClendon was, after his curfew, in a public place that was not his place of employment. Chamberlain's testimony also demonstrated that McClendon "committed new criminal offenses as alleged in violation." *Appellant's Appendix* at 32.

Although the revocation court did not specifically list the offenses, it incorporated by reference the Notice alleging McClendon had violated probation. The Notice alleged McClendon committed the offenses of misdemeanor public intoxication, misdemeanor resisting law enforcement, carrying a handgun without a license, and receiving stolen property. Clearly, the revocation court's order is best interpreted to mean that McClendon was guilty of all of those counts as alleged in the Notice. Chamberlain's testimony at the evidentiary hearing supports the probation court's findings with respect to all of those violations except public intoxication.

We agree with McClendon that although Officer Chamberlain testified he detected a strong odor of alcohol on McClendon's person and McClendon admitted he had been drinking, such does not prove McClendon was intoxicated. Because the violation alleged was intoxication, not mere use, the State was required to prove intoxication, and it failed to do so. Moreover, after reviewing the record of the evidentiary hearing, we find no evidence pertaining to McClendon's alleged violations of his obligations to the Probation Department. Thus, those findings are not supported by the record.

Nevertheless, "[i]f there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. The violation of a single condition of probation is sufficient to revoke probation." *Chism v. State*, 813 N.E.2d 402, 406 (Ind. Ct. App. 2004). Officer Chamberlain's testimony was sufficient to support the findings with

respect to the curfew violation, and the commission of the offenses of possessing a handgun without a license, receiving stolen property, and resisting law enforcement.

2.

McClendon contends the revocation court erred in executing the entire term of the sentence that had previously been suspended to probation. This assertion has two bases. First, McClendon claims revocation was improper because the findings of violations were invalid. Second, McClendon claims execution of the entire suspended sentence was erroneous because this was McClendon's first violation.

We review a sentencing decision in a probation revocation proceeding for an abuse of discretion. *Abernathy v. State,* 852 N.E.2d 1016 (Ind. Ct. App. 2006). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. *Id*. "When reviewing a trial court's decision to order a defendant's previously suspended sentence to be executed after revoking probation, we will not review the propriety of an original sentence." *Johnson v. State*, 692 N.E.2d 485, 488 (Ind. Ct. App. 1998).

In deciding Issue 1 above, we rejected the premise of McClendon's first claim, i.e., that the findings of violations were invalid. Some were invalid; but others were valid, and any one of the latter is sufficient to support revocation. Thus, there is no merit to McClendon's claim on this basis.

McClendon's second claim is that executing the entire sentence is erroneous in view of the facts that it is McClendon's first adjudication of probation violation and that

he "had gone a substantial time without committing another offense." *Appellant's Brief* at 12. In point of fact, McClendon had gone a little more than one year after sentencing before the incident that gave rise to these revocation proceedings. On that occasion, he was out after curfew and found in possession of a stolen handgun and a bag of women's jewelry at the time he was stopped. These offenses and what they portend do not strike us as minor matters deserving leniency in a revocation proceeding. The revocation court did not abuse its discretion in executing the entire three-year suspended sentence.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.